



Ken Cox

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

VIA FEDERAL EXPRESS

Ms. Lynn Elsenhans, CEO  
Sunoco, Inc. (R&M)  
1735 Market Street  
Philadelphia, PA 19103

JUL 16 2009

Re: **Request to Show Cause and Opportunity to Confer with EPA  
Representatives regarding EPA Finding of Resource Conservation and  
Recovery Act ("RCRA") Violations**

Dear Ms. Elsenhans:

This letter follows an inspection, which took place on August 5 and 6, 2008, of your Marcus Hook Refinery facility at 100 Green Street, Marcus Hook, PA 19601 ("the Facility") by inspectors from the U.S. Environmental Protection Agency ("EPA"), and subsequent correspondence between EPA and Sunoco, Inc. (R&M) ("Sunoco") about enforcement issues related to EPA's inspection.

EPA inspected the Facility on August 5 and 6, 2008, to examine the Facility's compliance with the authorized Pennsylvania Hazardous Waste Management Regulations ("PaHWMR"), 25 Pa. Code Ch. 260a-266a, 266b, 268a and 270a, and Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 *et seq.* EPA followed up this inspection with formal Information Request Letters, sent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927(a), dated February 12, 2009 and May 26, 2009. These Information Request Letters were answered by Sunoco in responses dated March 10, 2009 and June 3, 2009, and certified by Steve Herzog.

Section 3008(a) of RCRA authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Penalties are calculated in accordance with Section 3008(g) of RCRA and the RCRA Civil Penalty Policy (June 2003) (copy enclosed). Any person who violates any requirement of the authorized state hazardous waste management program is subject to a civil monetary penalty of not more than \$25,000 for each day of violation, adjusted upward to \$37,500 by the Civil Monetary Penalty Inflation Adjustment Rules, 69 Fed. Reg. 7121 (Feb. 13, 2004), and 72 Fed. Reg. 75340 (Dec. 11, 2008).

Effective January 31, 1986, November 27, 2000, and again on March 22, 2004, EPA authorized the Commonwealth of Pennsylvania to administer its revised hazardous waste management program *in lieu* of the federal program, including certain provisions implementing the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. The PaHWMR thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to RCRA § 3008(a). See 51 Fed. Reg. 1791 (January 15, 1986), 65 Fed. Reg. 57734 (September 26, 2000) and 69 Fed. Reg. 2674 (January 20, 2004).

The current PaHWMR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWMR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWMR authorization.

Based upon the information currently available to EPA, EPA believes that there is a sufficient basis for the issuance of an Administrative Complaint seeking assessment of a civil penalty, and containing a Compliance Order requiring Sunoco to comply with RCRA. Prior to issuing an Administrative Complaint, EPA is providing Sunoco the opportunity to confer with EPA to show cause as to any reasons why an Administrative Complaint should not be issued for the violations identified below. EPA is also inviting Sunoco to meet with EPA to discuss the possibility of entering into a settlement of the matter with the Agency without litigation.

### **I. EPA Finding of RCRA Violations**

EPA has identified the following possible RCRA violations at the Facility. Some of these violations were found in the area covered by the Facility's RCRA Permit, No. PAD980550594, issued by the Pennsylvania Department of Environmental Protection ("PADEP") on December 12, 2006 (expires July 10, 2011), and some of the violations were found in unpermitted areas that Sunoco has designated as areas that can store hazardous waste for 90 days or less. Sunoco has four separate "≤ 90-day storage areas," which include:

- (a) inside Building 12,
- (b) outside of the "CAT Lab" Riverside Building,
- (c) inside the R&D Lab Building, and
- (d) the heat exchanger bundle cleaning pad.

It appears that there are violations at the first three of these areas. During the inspection, and through subsequent information request letters, EPA's inspectors gathered facts evidencing the following possible violations:

#### **1. Operating a Treatment, Storage, and Disposal Facility ("TSD Facility") without a Permit, in Violation of 25 PA Code Ch. 270a.1 [40 C.F.R. § 270.1(b) and (c)].**

Sunoco violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 PA Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b) [hereinafter, the federal regulation incorporated by reference into the authorized PaHWMR shall appear in

brackets], by operating several hazardous waste storage areas at its Facility without a permit or interim status. At portions of the Facility, Sunoco may have attempted to comply with the generator accumulation exemption to the permit requirement, found in 25 PA Code § 262a.10 [40 C.F.R. § 262.34]. However, Sunoco did not qualify for this exemption because of its failure to comply with all of the conditions for this exemption. In addition to the violations described below, during the August 2008 inspection, EPA determined that Sunoco accumulated hazardous wastes in the unpermitted areas, in various containers, for greater than the 90-day period allowed by 25 PA Code § 262a.10 [40 C.F.R. § 262.34(a)]. Wastes that had been accumulating for greater than 90 days included:

#### Building 12:

In Building 12, EPA's inspectors observed that the following hazardous wastes had been accumulating for more than 90 days:

Zinc dust (in a 55-gallon drum for 105 days)  
Methyl Mercaptan (in a 5-gallon bucket for 178 days)

In addition, a review of the Building 12 weekly inspection logs submitted on June 3, 2009, indicate additional periods when hazardous waste was stored greater than 90 days. Those wastes and their storage periods are:

- a. Chlorobenzene – 11/2/05 to 2/20/06
- b. Picric Acid – 7/25/06 to 2/12/07 (stabilized) to 4/19/07
- c. Sensors – 10/25/06 to 4/19/07
- d. Silica Gel – 9/14/06 to 4/19/07
- e. Corrosive Solids – 1/8/07 to 4/19/07
- f. Waste Phenol – 5/15/08 to 9/4/08

For the chlorobenzene, picric acid and sensors, please provide hazardous waste determinations, hazardous waste codes, and manifests for the off-site treatment, storage or disposal of these wastes.

In addition, the log indicated that silica gel, clay, petroleum product, acetone, toluene and methanol had accumulated in three containers for 137, 167 and 177 days. From the manifests, it is unclear which containers stored which wastes, and which containers accumulated waste for what duration. Please clarify which hazardous wastes were stored in which containers, and for how long each container accumulated waste. Provide the waste determinations for these containers.

#### Riverside Lab

Satellite containers in the Riverside Lab labeled "contaminated solid debris" and "contaminated lab debris" were accumulating small amounts of hazardous waste, with no dates marked on the containers, in violation of the requirement of 25 PA Code § 262a.10 [40 C.F.R. § 262.34(a)(2)]. While the Facility could have benefitted from the less restrictive satellite accumulation requirements in 40 C.F.R. § 262.34(c)(1), Sunoco did

not meet the prerequisites for this exemption, because the bucket of contaminated lab debris was open at a time when waste was not being added or removed, in violation of 25 PA Code § 265a.1 [40 C.F.R. § 265.173(a)].

These conditions, plus the conditions described below, disqualify Sunoco from benefitting from the generator accumulation exemption for those areas, as well as the satellite accumulation exemption in 25 PA Code § 262a [incorporating the generator exemption at 40 C.F.R. § 262.34(a)(3) and the satellite accumulation exemption in 40 C.F.R. § 262.34(c)(1)(ii)].

**2. Failure to Clearly Label Each Container on the Permitted Pad with the Contents of the Container, in Violation of the Facility's RCRA Permit Requirement.**

Sunoco's RCRA Permit contains requirements for managing containers of waste on the Permitted Pad. The Permit, at Attachment 3 (Waste Analysis Report), requires the following: "All containers will be clearly marked as to the contents of the container and dated." See RCRA Permit, page 3-4, Section 3.5.1, paragraph 5 (emphasis added). During the August 2008 inspection, EPA inspectors observed wastes stored on the Permitted Pad, and found that a number of the containers had labels that were faded and illegible at the time of the inspection. For the following containers storing hazardous wastes, their contents could not be identified, either because the labels were faded, or there were no labels:

- a. one 55 gallon drum (green and white) containing COP 550 combustion promotor
- b. one 55 gallon drum with unknown contents
- c. several drums with crude bottoms from tank number 358
- d. one roll-off box containing bundle sludge
- e. one roll-off box containing excavated spoils from gas plant processing units

By failing to clearly and properly label each container with its contents, Sunoco violated a condition of its RCRA Permit.

**3. Failure to Clearly Label Each Container on the Permitted Pad with the Date that the Container Began Accumulating Waste, in Violation of the Facility's RCRA Permit Requirement.**

Sunoco failed to properly label all containers storing hazardous waste with the date that the container began accumulating waste. As explained above, Sunoco's RCRA Permit for the Facility, at Attachment 3 (Waste Analysis Report), requires the following: "All containers will be clearly marked as to the contents of the container and dated." See RCRA Permit, page 3-4, Section 3.5.1, paragraph 5 (emphasis added). During the August 2008 inspection, EPA inspectors observed that the following containers storing hazardous wastes had either illegible dates, incorrect dates or no date:

- a. one 55-gallon drum (green and white) containing COP 550 combustion promotor
- b. several drums with crude bottoms from tank number 358

- c. three drums containing TK crude oil tank bottoms
- d. two roll-off boxes containing excavation spoils from the gas process unit
- e. one roll-off box containing bundle sludge

By failing to clearly and properly label each container on the Permitted Pad with the date that the container began accumulating hazardous waste, Sunoco violated a condition of its RCRA Permit.

**4. Failure to Operate the Facility in a Manner that Prevents or Minimizes Releases, in Violation of the Facility's RCRA Permit, Part II, Section A, page 8.**

Sunoco's RCRA Permit for the Facility, at Part II, Section A (Design and Operation of Facility), page 8, requires: "The Permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water which could threaten human health or the environment." During the August 2008 inspection, EPA inspectors observed three roll-off boxes that were located on the Permitted Pad. One of these roll-off boxes contained excavation spoils from the gas plant process units. The inspectors observed that the tarp covering this particular box was covered with the same waste that had been placed in the box, from the loading operation. As a result, wind or rain could easily blow this hazardous waste off of the top of the tarp, and onto the surrounding ground or waterway. Sunoco violated this Permit condition by failing to containerize the waste in a manner that would prevent or minimize releases.

**5. Failure to Keep Containers Closed Except When Adding or Removing Hazardous Waste, in Violation of the Facility's RCRA Permit, Part III, Section G, page 13, and 25 PA Code §§ 264a.1 [40 C.F.R. § 264.173(a)].**

25 PA Code § 264a.1 [incorporating 40 C.F.R. § 264.173(a)] provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. For the Facility's Permitted Pad, the Facility's RCRA Permit, Part III, Section G (Management of Containers), page 13, similarly incorporates the requirements of 25 PA Code § 264a.1 and 40 C.F.R. § 264.173(a).

Permitted Storage Pad

During the August 2008 inspection, EPA inspectors observed a roll-off box on the Permitted Pad which was storing excavated spoils from the gas processing units. The inspectors observed that the tarp covering this roll-off box had a rip in it, allowing its contents to be exposed to rainwater. This condition violated the provisions of the Facility's RCRA Permit, Part III, Section G, page 13 [incorporating 40 C.F.R. § 264.173(a)].

Riverside Building and R&D Lab

In addition, the following unpermitted areas also had open container of hazardous waste. EPA's inspectors observed that satellite containers in the Riverside Building and R&D Lab were open when hazardous waste was not being added or removed:

Room D147

- a. A 5-gallon plastic bucket containing used plastic pipettes
- b. A red plastic bucket containing small glass vials from one of the analytical instruments

Room D145

- a. A small cardboard cup with a hazardous waste label, containing pipettes
- b. A can containing spent sample hydrocarbons
- c. A "sharps" container that accumulates analytical syringes that are managed as hazardous waste

The conditions in the Riverside Building and R&D Lab were in violation of 25 PA Code § 264a.1 [40 C.F.R. § 264.173(a)].

Therefore, Sunoco violated a condition of its RCRA Permit and the requirements of 25 PA Code § 264a.1 [40 C.F.R. § 264.173(a)], by failing to keep the Facility's hazardous waste containers closed except when adding or removing hazardous waste.

**6. Failure to Maintain the Permitted Storage Pad so that it is Free of Cracks or Gaps, in Violation of the Facility's RCRA Permit, Part I, Section H.6 and Part III, Section H.**

The Facility's RCRA Permit, Part I, Section H.6 (Duties and Requirements, Proper Operation and Maintenance) and Part III, Section H (Containment) [incorporating 40 C.F.R. § 264.175(b)(1)], require the containment system at the Facility to be designed and operated with a base underneath the containers that is "free of cracks or gaps, and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed." During the August 2008 inspection, EPA inspectors observed the Permitted Pad and found that previously repaired cracks were in poor condition, as epoxy that had been used to fill gaps was cracked. These gaps allowed dirt and rainwater to seep beneath the Pad. Further, the Pad had debris on it in several areas, and was not kept clean, making it difficult to inspect the Pad. Therefore, Sunoco violated the requirements of its RCRA Permit by failing to maintain the Permitted Pad in a manner so that it was free of cracks and gaps.

**7. Failure to Store Containers in a Proper Configuration, in Violation of 25 PA Code § 264a.173 and 40 C.F.R. § 264.35.**

25 PA Code § 264a.173 requires that, for indoor storage of hazardous waste, the container height, and width and depth of a group of containers shall provide a configuration and aisle spacing which ensures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. Similarly, 40 C.F.R. § 264.35 requires ample aisle space for emergency response. During EPA's inspection, the inspectors observed that the drums in Building 12 were stored in a configuration that made it difficult to read labels on some of the drums. They also found that there would not have been sufficient aisle space to allow the unobstructed movement

of personnel, fire protection equipment, spill control equipment or decontamination equipment in an emergency. Thus, Sunoco violated 25 PA Code § 264a.173 and 40 C.F.R. § 264.35, by failing to position the containers in a way that allowed access for purposes of inspection and emergency response.

**8. Failure to Keep Waste Lamps in Closed Containers, in Violation of 25 PA Code § 266b.1 [40 C.F.R. § 273.13(d)(1)].**

25 PA Code § 266b.1 [incorporating 40 C.F.R. § 273.13(d)(1)] requires that “[a] small quantity handler of universal waste must place any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.” During the August 2008 inspection, EPA inspectors observed that the Facility stored universal waste bulbs in containers that were not closed. Therefore, Sunoco violated 25 PA Code § 266b.1 [40 C.F.R. § 273.13(d)(1)], by failing to store universal waste lamps in closed containers.

**9. Failure to Label Containers of Universal Waste Lamps, in Violation of 25 PA Code § 266b.1 [40 C.F.R. § 273.14(e)].**

25 PA Code § 266b.1 [incorporating 40 C.F.R. § 273.14(e)] requires that “[e]ach lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: ‘Universal Waste-Lamp(s), or ‘Waste Lamp(s),’ or ‘Used Lamp(s).’ ” During the August 2008 inspection, EPA inspectors observed that the Facility had initially labeled its boxes of waste lamp boxes properly, but then covered the labels with duct tape, rendering the labels unreadable and the boxes unlabeled. Sunoco violated 25 PA Code § 266b.1 [40 C.F.R. § 273.14(e)], by failing to visibly label its containers of used lamps with these phrases.

**10. Failure to Maintain a Fully Signed Copy of a Manifest Returned from the TSD Facility, or submit an Exception Report, in Violation of 25 PA Code § 262a.10 [40 C.F.R. §§ 262.40 and 262.42].**

25 PA Code § 262a.10 [incorporating 40 C.F.R. § 262.40] requires generators to keep a copy of each manifest signed by the Treatment, Storage or Disposal Facility. 25 PA Code § 262a.10 [incorporating 40 C.F.R. § 262.42] requires generators to submit to EPA an exception report if a signed manifest from the TSD Facility cannot be obtained after contacting the TSD Facility. During the August 2008 inspection, EPA inspectors gathered documentation showing that Sunoco had sent two shipments of waste to Casie Ecology Oil Salvage, Inc. on February 14, 2008. These shipments consisted of 33,560 lbs of contaminated soil (D018, Manifest No. 000714054 FLE) and 38,960 lbs of primary separator sludge containing benzene (F037, Manifest No. 000714055 FLE). However, the documentation for these shipments did not contain signed copies of the manifest from the TSD Facility, nor did Sunoco submit exception reports to EPA for these shipments.

Therefore, Sunoco violated 25 PA Code § 262a.10 [40 C.F.R. §§ 262.40 and 262.42], by failing to have manifests signed by the TSD Facility for these shipments, and failing to submit to EPA exception reports for these shipments.

**11. Failure to Make a Waste Determination, in Violation of 25 PA Code § 262a.10 [40 C.F.R. § 262.11].**

25 PA Code § 262a.10 [incorporating 40 C.F.R. § 262.11] requires generators of solid waste to determine whether the waste is hazardous. This determination should be made through chemical analysis and/or knowledge, and then comparing the results to the applicable regulations. During the August 2008 inspection, EPA inspectors observed that on June 6, 2008, Sunoco shipped a corrosive waste, 1,100 gallons of waste potassium permanganate, as a non-hazardous waste. This mistake was observed by the TSD Facility, Clean Venture/Cycle Chem, and reported to Sunoco on June 10, 2008. Sunoco violated 25 PA Code § 262a.10 [40 C.F.R. § 262.11] by failing to make a proper waste determination.

**12. Failure to List the Proper Waste Code on the Manifest, in Violation of 25 PA Code § 262a.10 [40 C.F.R. Part 262, Appendix, Item 13].**

25 PA Code § 262a.10 [40 C.F.R. Part 262, Appendix, Item 13] requires the generator to place on the manifest the federal and state waste codes that are most representative of the properties of the waste being shipped. As explained above, EPA inspectors observed that on June 6, 2008, Sunoco shipped a corrosive waste, 1,100 gallons of waste potassium permanganate, as a non-hazardous waste. This mistake was observed by the TSD Facility, Clean Venture/Cycle Chem, and reported to Sunoco on June 10, 2008. Sunoco violated 25 PA Code § 262a.10 [40 C.F.R. Part 262, Appendix, Item 13], by failing to include the waste code on the manifest that best described the potassium permanganate.

## **II. OPPORTUNITY TO CONFER WITH EPA REPRESENTATIVES**

If Sunoco wants to take advantage of the opportunity to discuss this matter with EPA prior to the filing of an administrative complaint, EPA requests that Sunoco contact the Agency within fourteen (14) calendar days after Sunoco's receipt of this letter to set up a meeting to discuss these issues. If you wish to discuss this matter, please contact Kenneth Cox, Environmental Engineer, at (215) 814-3441, or have your attorney contact Natalie Katz, Senior Assistant Regional Counsel, at (215) 814-2615.

Please be advised, however, that EPA may issue an Administrative Complaint and Compliance Order at any time after thirty days of the issuance of this Request to Show Cause, unless an agreement in principle is reached or Sunoco provides information to EPA showing that violations have not occurred.



### **III. RESPONSIVE SUBMISSIONS**

In responding to this Request to Show Cause, please submit any and all information and direct any request for a settlement conference, to the attention of either:

Mr. Kenneth J. Cox  
Enforcement Officer  
RCRA Compliance & Enforcement Branch (3LC70)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029;

or

Ms. Natalie L. Katz  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Pursuant to the regulations set forth at 40 C.F.R. Part 2, Subpart B, Sunoco is entitled to assert a business confidentiality claim covering any part of the submitted information, subject to EPA's evaluation of the information's confidential status. Unless such a confidentiality claim is asserted at the time the required information is submitted, EPA may make this information available to the public without further notice to Sunoco. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above-cited regulations. Any such claim for confidentiality must conform to the requirements set forth in 40 C.F.R. § 2.203(b).

As part of any submission of information to EPA pursuant to this Request to Show Cause, Sunoco must also include the following signed and dated certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response to Information Request and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment."

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This Request to Show Cause is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

For your further information, please be advised that certain companies may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the attached "*Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*," for more information about this requirement and to aid you in determining whether your company may be subject to the same.

To the extent that there are ongoing violations at the Facility, these violations should be corrected immediately. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address past and/or ongoing violations at the Facility, including, but not limited to, the imposition of civil penalties.

If you have any other questions concerning this matter, please contact Kenneth Cox, Environmental Engineer, at (215) 814-3441, or have your attorney contact Natalie Katz, Senior Assistant Regional Counsel, at (215) 814-2615.

Sincerely,



Carol Amend, Associate Director  
Land and Chemicals Division  
Office of Land Enforcement

Enclosures  
PA Hazardous Waste Regulations  
RCRA Civil Penalty Policy (June 2003)

cc: *Arnie Dodderer, senior counsel, Sunoco*  
Michael Kuritzkes, General Counsel, Sunoco  
Natalie L. Katz (3RC30)  
Kenneth J. Cox (3LC70)